

PART 2015 - INFORMATION

SUBPART E - AVAILABILITY OF INFORMATION UNDER THE PRIVACY ACT

Purpose: Purpose: This instruction supplements the following paragraphs of Rural Development Instruction 2015-E.

2015.203 Access to records and 2015.210 Exhibits.

In situations where an applicant/borrower/grantee wants a 3rd party to have access to records contained in their file, Exhibit A “Authorization to Make Inquiry of the Rural Development, A Government Mission Area, and Waiver of Provisions of the Privacy Act of 1974” will be used.

Unless the applicant/borrower/grantee wants all of his/her records to be released, the particular matter about which the third party may be informed must be identified on Exhibit A. All persons (or entities) to whom information may be released can be included on the same form. The applicant/borrower/grantee has the option to limit the period of time a particular 3rd party may have access to all or specific records. In cases where more than one 3rd party is designated and different periods of access are requested, a separate Exhibit A should be completed.

To ensure that the applicant is actually giving permission to release records, the signature of two witnesses is required. It would be sufficient to have one USDA employee be a witness. As an alternative, the applicant/borrower/grantee could have the signature notarized if he/she is not able to sign in front of a USDA employee.

Section 2015.204 Legal basis for withholding information (exemptions from disclosure)

Certain records maintained within Rural Development's System of Records may be lawfully withheld from customers under the Freedom of Information Act, 5 U.S.C. 552 and the Privacy Act, 5 U.S.C. 552a. Where necessary, a separate file will be established for a customer to protect from disclosure:

- A. Information compiled in reasonable anticipation of a civil action or proceeding, exempt under 5 U.S.C. 552a (d)(5).

B. Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency, except under 5 U.S.C. 552 (b)(5). This category of information includes communications with the Office of General Counsel, United States Attorney's Office, Office of Inspector General or a contract attorney representing Rural Development in foreclosure or other civil proceedings.

C. Investigatory material compiled for law enforcement purposes, exempt under 5 U.S.C. 552a. This category usually involves material compiled for law enforcement purposes given to Rural Development under a promise of confidentiality, such as conversion and problem case reports, and includes the identity of individuals who provide information to Rural Development and the content of the information provided under an expressed promise of confidentiality, particularly where informants reasonably fear reprisal.

The following documents and communications should not be released to a customer, or to any third person authorized by the customer to review his/her file without Rural Development personnel first obtaining written authorization for the release:

1. All communications, including letters, memoranda, opinions, decision letters or written reports of phone calls, from the United States Attorneys, the Office of General Counsel, or any contract attorney to Rural Development personnel or from Rural Development personnel to the United States Attorneys, OGC or a contract attorney, whether or not such communications relate to any litigation or anticipated litigation.
2. Investigations conducted by OIG, requests for investigation, documents submitted to OIG in support of the requests, and any correspondence, memorandum, or decision relating to the investigation, whether directed to an attorney, an employee of Rural Development or another government agency, or to a third party.
3. The identity of any individual who provides information to Rural Development under an expressed promise of confidentiality and the content of the information provided. Documentation might include notations on a running record or on Rural Development Form 2030-6, Record of Telephone Call or Office Visits.
4. Any other information compiled in reasonable anticipation of a civil action or proceeding. This category would include statements of account, worksheets, Reports of Problem Cases (Rural Development Form 1955-2), Requests for Legal Action (Rural Development Form 455-1), and other documentation compiled after an account is accelerated and for purposes of commencement of a foreclosure action, including

appraisals, lien searches and title opinions prepared for purposes of the foreclosure. It would also include information compiled for purposes of a civil conversion action against the borrower or an auctioneer or other third party, or for purposes of objecting to a discharge in bankruptcy on grounds of fraud or conversion.

In order to make sure that no information is released which is exempt from disclosure, each Area and Local Office should use the following procedures:

A. If information falling into one of the above 4 categories is generated or received by the Area or Local Office, open a new file for the customer when the first of such information is received or generated. Once the new file is opened, any later correspondence, communication or other information in any of the exempted categories should be filed in the new file. Any information that is not exempted should continue to be filed in the customer's case file.

B. If no new file has previously been created, a new file must be created when a Notice of Acceleration and Demand for Payment is sent to the customer. After acceleration, all further correspondence and information relating to the customer should be put in the new file.

C. The new file created to contain exempted information should be labeled with the Customer's name, Case Number, and the following statement: *THE CONTENTS OF THIS FILE ARE EXEMPT FROM DISCLOSURE PURSUANT TO 5 U.S.C. 552a (d)(5), or 5 U.S.C. 552 (b)(5).*

1. Stamp each document put in the new file in the upper right hand corner with the words "DO NOT RELEASE."

2. Store the new file directly behind the customer's case file(s) in the operations file drawer.

D. If a new file has been created for a customer, his case file must contain a written memorandum stating: Confidential Information has been removed from this file and is exempt from disclosure pursuant to 5 U.S.C. 552a (d)(5), 5 U.S.C. 552 (b)(5) or 5 U.S.C. 552a.

E. It is not necessary to review all existing customer case files and establish separate files for exempted information. Rather, the Area or Local Office Manager should review the file and create a new file for exempted information:

- (1) at the time a customer or his/her authorized representative first requests to review the customer's case file; or
- (2) when the customer's account is accelerated; or
- (3) when Rural Development makes a request for good faith determination, OIG investigation, or other civil action (conversion, fraud, etc.); or
- (4) when the first information that may be exempted is generated or received by the Area or Local Office; for example, a letter is received from OGC or the United States Attorney; the Area or Local Office Manager writes OGC for a legal opinion on some issue concerning the customer, or an informant who is promised confidentiality calls the office.

F. If a customer requests information which is exempted from disclosure, the Area & Local Office Manager should call the Office of General Counsel to request a review of the information and written authorization for its release. The Office of General Counsel will either then make the determination as to release or, if the United States Attorney's Office is representing Rural Development regarding the customer making the request, refer the request for review to the Assistant United States Attorney in charge of the case.

G. Appraisal Reviews should be maintained in Operational File 1922-1, Appraisal Reviews. FOIA requests for a copy of the review will be considered on a case by case basis by the FOIA officer and, if appropriate, consultation with OGC.

Attachments: Exhibits A and B

oOo